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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/609,497	07/01/2003	Rikke Mikkelsen	Q76406	1689
23373	7590	08/31/2006	EXAMINER	
SUGHRUE MION, PLLC 2100 PENNSYLVANIA AVENUE, N.W. SUITE 800 WASHINGTON, DC 20037			PRATT, HELEN F	
			ART UNIT	PAPER NUMBER
			1761	

DATE MAILED: 08/31/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/609,497

Applicant(s)

MIKKELSEN ET AL.

Examiner

Helen F. Pratt

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 July 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-32 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-32 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1- 32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bernatz et al. (6,551,643) in view of Phillips (4,117,645) and Corriveau (WO 03011045).

Bernatz et al. disclose a method of making chewing gum containing a gum base and other ingredients such as a sweetener (claim 5) as claimed (abstract and col. 4, lines 30-33, lines 48-70, col. 6, lines 40-70, col. 7, lines 1-5, col. 9, lines 6-15, col. 9, lines 20-35). Claims 1 and 4 differ from the reference in the step of conveying the extruded gum granules to a tableting machine and pressing the gum granules into compressed chewing gum tablets. However, Corriveau et al. disclose that it is known to tablet gum made from gum chips. No patentable distinction is seen at this time between chips and granules as they can both be pressed into another form. Therefore, it would have been obvious to press a composition as disclosed by the Corriveau in the process of Bernatz et al. Also, Phillips discloses that it is known to pelletize gum before making it into a final product by extruding it into a liquid medium (abstract). The pelletized gum is then transported to its final destination before being further processed into the desired gum formulation. Therefore, it would have been obvious to further process gum pellets or granules as shown by Phillips in the process of Bernatz et al.

Claims 2-3 further require that the gum granules contain particular amounts of gum base. However, as it is known to use 70% gum base, it would have been obvious to use more gum base and less of the other ingredients, depending on the product desired.

The gum base and sweetener are mixed together as in step b (col. 4, lines 8-14, col. 9, lines 9-35).

Claims 7-15 further require particular amounts of sweetener and flavor. The reference discloses sorbitol in amounts of 20% and intense sweetener's. Menthol is disclosed in amounts from 1.50% to 2% (col. 9, lines 20-35).

Claims 16-18 further require particular sizes of cut granules. Bernatz discloses die plate apertures from 2.mm to 3.2 mm (col. 9, lines 9-15).

Claim 19 further requires die plate openings with two different sizes. Bernatz et al. disclose die plates having multiple uniform apertures (col. 9, lines 6-11). Ream et al. disclose that it is known to use 90% particles of chewing gum having a size of 0.5 to 6 mm.

Claim 20-24 further requires that the granules have two different diameter sizes, and claims 21-24 various sizes. Corriveau discloses that it is known to make gum chips in sizes from 0.5mm to 6.0 mm (0033). The reference discloses that the difference in particle size of the gum components and the tableting media results in a non-homogeneous distribution of gum components (003) when compacted, i. e. tableted. Therefore, it would have been obvious to use the chip sizes and the different sizes of

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chips as disclosed by Corriveau in the process of Bernatz to make granules of varying sizes.

Claim 25 further requires removing the surface liquid from the extruded granules, claim 26, classifying the extruded granules. Bernatz et al. disclose using a centrifugal dryer to separate the water from the product as in claim 25 (abstract) and classifying the gum products by allowing the gum products to pass through a screen, which rejects oversized products (col. 5, lines 55-70).

The limitations of claims 27, 28 have been disclosed above and are obvious for those reasons.

Claims 29 and 30 further require that the tablets contain from 30-45% of the gum base. Corriveau et al. disclose that the gum component can be from 40-60% of the tableted gum. Therefore, it would have been obvious to use known amounts of gum base in the process of the combined references.

Claim 32 further requires various ingredients for the coating. Corriveau et al. disclose that the tableting medium, which is considered to be a coating, can be various ingredients such as color, emulsifier, flavoring (0043). At any rate coating for gum pieces are well known as in CHICKLETS (trade name). Therefore, it would have been obvious to use known coatings in the claimed composition and to use the coating of Corriveau in the process of the combined references for its function as a coating.

ARGUMENTS

Applicant's arguments filed 7-5-06 have been fully considered but they are not persuasive. Applicants argue that there is no reason in the obviousness statement to

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combine the references. Generally, in an office action, what the references teach is set forth. If the primary reference teaches one phase of the claim limitations, and the secondary reference teaches what is left out of the primary reference, then it is obvious to combine the references, i. e. as in claim 1, Bernatz teaches making gum base. Corriveau teaches making the gum tablets from gum chips. Therefore, since pressing gum chips is known, as disclosed by Corriveau, it would have been obvious to take a gum base and make it into chips and to tablet the gum as shown by Corriveau in the process of Bernatz et al.

Applicants argue that there is no incentive to make miniature gumballs into tablets. However, the reference is used to show that it is known to make extrude gum compositions into a liquid filled chamber and to make balls in the claimed size (granules). Applicants state that their claims require a high use of gum base in amounts of 71-99%, which avoids tackiness in the gum. However, the reference to Corriveau uses about 60% with the aid of tableting powders, thereby reducing tackiness. Nothing has been shown that using a little more gum would not have worked in the process of Corriveau, particularly as Corriveau uses "about 60%". Also, there is no exclusion of tableting powders.

It is not seen that the maximum amount of gum base is limited to 40% in Corriveau as applicants argue. Certainly, the numbers referred to in the sweetener and corn syrup composition only refer to the sweetener, softener, flavoring and coloring composition (para. 0042, last 3 lines).

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Helen F. Pratt whose telephone number is 571-272-1404. The examiner can normally be reached on Monday to Friday from 9:30 to 6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Milton Cano, can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should

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you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Hp 8-29-06

H. Pratt
HELEN PRATT
PRIMARY EXAMINER